THE HONOURABLE SRI JUSTICE
GODA RAGHURAM

WRIT PETITION No. 5692 of 1998

Dated: 19-07-2012

Between

T.Narasimha Reddy

…Petitioner

And

Government of A.P., rep. by its
Secretary, Revenue (Endts.III) Department,
Hyderabad and another

…Respondents

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Oral order:

Heard Sri G.Vidyasagar, learned counsel for the petitioner, Sri A.K.Jayaprakash Rao, learned Standing counsel for TTD. There is no representation on behalf of the respondent-State though the learned Govt. Pleader for Endowments is reflected in the cause list.

The validity of G.O.Ms.No.484 Revenue (Endt.III) Department, dated 7-8-1997 issued by the 1st respondent-the State of Andhra Pradesh, deleting clause (viii) of Rule 9 (1) of the Tirumala Tirupathi Employees Service Rules, issued in G.O.Ms.No.1060, Revenue Department, dated 24-10-1989, as amended in G.O.Ms.No.375, Revenue Department, dated
26-4-1994; so as to come into force with effect from 13-12-1995, the date on which G.O.Rt.No.1562, Revenue Department, dated 13-12-1995 was issued (keeping the amendment issued to Rule 9 in G.O.Ms.No.375, Revenue Department, dated 26-4-1994, in abeyance), is assailed in this writ petition, on several grounds.

At the hearing of the writ petition however, Sri G.Vidyasagar the learned counsel restricts the challenge to the retrospective aspect of the amendment, issued under the impugned G.O. i.e., deletion of rule 9(1)(viii) with effect from 13-12-1995.

Sri G.Vidyasagar states that the challenge to the validity of G.O.Ms.No.484 dated 7-8-1997 on other substantive grounds is not being canvassed in this writ petition.

The matrix of the relevant chronology of events may be noticed, in brief;

(a) In March, 1982, the petitioner was appointed as a Binder in TTD Services and in 1984 he acquired the qualification of

diploma in LME. In July, 1986 the TTD caused issuance of a notification inviting applications from qualified eligible candidates for appointment as Assistant Engineer. It is the common case of the parties to this writ petition that a licentiate in Mechanical Engineering (LME) is the relevant qualification for appointment to the post of an Assistant Engineer. It is also the common case of the parties that the petitioner was however not eligible for consideration for appointment as an Assistant Engineer (Civil) by direct recruitment *qua* the notification dated

20-7-1986 issued by the TTD. However the petitioner lodged a representation to the TTD to consider his case for appointment as Assistant Engineer (Civil) and then filed W.P.No. 10911 of 1986 for consideration of his case to the post notified.

(b) On 21-8-1986 W.P.No. 10911 of 1986 was disposed of directing the respondents including the TTD to consider the petitioner's case for appointment to the post of Assistant Engineer (Civil).

(c) In G.O.Ms.No.1060, dated 24-10-1989 the State Government issued the TTD Employees Service Rules, in exercise of the rule making power under Section of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the 1987 Act')(for short 'the TTD Rules). These Rules set out the substantive and procedural norms for appointment to various posts including the post of Assistant Engineer (Civil). The TTD Rules enjoin the qualification of LCE/LME with 5 years experience in the category of Draughtsman Grade-II, as the eligibility criterion for appointment to the post of Assistant Engineer (Civil). Needless to state that the petitioner was not qualified for appointment as Assistant Engineer (Civil) since

he did not have the 5 years experience in the category of Draughtsman Grade-II, being a Binder.

(d) On 10-2-1992 the State issued orders in G.O.Ms.No.173 proposing amendments to Rule 9 of the TTD Rules and proposing to incorporate a clause rendering eligible persons acquiring higher qualifications in any field and working in any other sections or departments of the TTD, for appointment by transfer as and when vacancies arise within the TTD management and on priority basis.

(e) In furtherance of the decision recorded in G.O.Ms.No.173, the State issued G.O.Ms.No.375 on 26-4-1994 introducing clause (viii) in Rule 9 (1) of the TTD Rules. Thereby persons acquiring higher qualifications working in any other sections or departments of the TTD were eligible to be considered for recruitment by transfer to a post to which they had the requisite qualification for appointment.

(f) As a consequence of the amendment issued to Rule 9 *qua* G.O.Ms.No.375 supra, it is the synoptic case of the parties that the petitioner became eligible for appointment as Assistant Engineer (Civil) since he possessed the qualification of LME (one of the requisite and prescribed qualifications).

(g) As despite the amendment above, his case was not considered for the post of Assistant Engineer (Civil), the petitioner filed W.P.No.19745 of 1994; whereat on 29-12-1994 interim orders were passed directing consideration of his case for appointment as Assistant Engineer (Civil). As the TTD displayed intransigence despite the above interim order, the petitioner filed Contempt Case No. 235 of 1995 complaining violation of the interim order dated 29-12-1994. To avoid the consequence of the alleged contumacy, the State issued G.O.Rt.No.1562 on 13-12-1995 keeping the

amendment to Rule 9 (issued in G.O.Ms.No.375 i.e., clause (viii)), in abeyance. It requires to be noticed that G.O.Rt.No.1562 was an executive order issued in purported exercise of the power of the State under Article 154 and 162 read with 166(1) of the Constitution, purporting to temporarily eclipse the statutory Rule made by the State (in G.O.Ms.No.375) in exercise of the rule making power under Section 153 of the 1987 Act. Be that as it may.

(h) On 22-12-1995 however, the petitioner was appointed as Assistant Engineer (Civil) but subject to the outcome of W.P.No.19745 of 1994.

(i) On 31-10-1996 the management of the TTD resolved and recommended cancellation of the amendments issued in G.O.Ms.No.375. The State Government concurred with the TTD and issued the impugned G.O.Ms.No.484 on 7-8-1997 deleting clause (viii) of Rule 9 (1) of the TTD Rules, as amended in G.O.Ms.No.375, with retrospective effect from 13-12-1995.

Aggrieved thereby the present writ petition is filed and by an interim order, operation of the impugned G.O.Ms.No.484 was interdicted by the Court.

By the judgment dated 12-10-2007 a learned Full Bench of this Court, by a common order, considered the present Writ Petition (No.5692 of 1998) along with two other writ petitions-W.P.Nos.19745 and 20333 of 1994. W.P.No.19745 of 1994 was also by the petitioner herein, challenging the action of the TTD and its Chief Engineer in appointing respondents 3 to 13 therein by an order dated 29-10-1994, to the post of Assistant Engineer (Civil), on the ground that they were promoted though they do not possess the minimum experience and qualifications as prescribed by the TTD Rules. W.P.No.20333 of 1994 was by one K.Suresh Reddy challenging the validity of G.O.Ms.No.375

whereby Rule 9 of the TTD Rules was amended.

The learned Full Bench dismissed W.P.Nos.19745 of 1994 and 5692 of 1998 (the present writ petition) and observed that consequently W.P.No.20333 of 1994 filed by K.Suresh Reddy had become infructuous. Aggrieved thereby the petitioner filed an appeal to the Supreme Court by Special Leave and also sought review of the decision of the learned Full Bench dated 12-10-2007. On 8-7-2008 the Supreme Court, noticing that the petitioner had already sought review of the Full Bench judgment, observed that the High Court should dispose of the review petition expeditiously and that the Special Leave petition would be taken up thereafter.

By the order dated 31-7-2009 the review petition by the petitioner was, to the extent relevant and material for our purposes, allowed and the three writ petitions mentioned above were restored to file. It requires to be noticed that as a consequence of this order of the learned Full Bench in the review application of the petitioner, the aspect as to the validity of G.O.Ms.No.484 (herein impugned) was set at large.

It is stated by Sri G.Vidyasagar that the Special Leave Petition was thereafter dismissed as infructuous in view of the order of the learned Full Bench allowing the petitioner's review application.

On 21-5-2008, in view of the retrospective repeal of Rule 9 (1) (viii) *qua* G.O.Ms.No.484 and the consequent retrospective ineligibility of the petitioner to be considered by recruitment by transfer for appointment as Assistant Engineer (Civil), orders were issued by the TTD, reverting the petitioner to his substantive post of Binder from the post of Assistant Engineer (Civil) to which he was promoted on 22-12-1995.

It is the petitioner's grievance addressed in this writ petition that the assumed efficacy of G.O.Ms.No.484 was selectively applied only to him and the TTD took no steps to revert several others appointed by recruitment by transfer in view of G.O.Ms.No.375; and despite the

eclipse of G.O.Ms.No.375 by G.O.Ms.No.484. TTD denies this allegation. Be that as it may.

However, by an order dated 24-10-2009, presumably in view of allowing of the review application, the petitioner was restored to duty as Assistant Engineer (Civil). He is continuing as such as on date.

G.O.Ms.No.1060 dated 24-10-1989; the amendment thereto issued in G.O.Ms.No.375 dated 26-4-1994 incorporating clause (viii) in Rule 9 (1) of the TTD Rules; and the impugned G.O.Ms.No.484 dated 7-8-1997 deleting the amendments issued in G.O.Ms.No.375 and with retrospective effect from 13-12-1995, are all instruments issued by the State in exercise of the rule making powers conferred by Section 153 of the 1987 Act. Section 153 of the 1987 Act reads:

> ***153. Power to make rules**:*
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> *(1) The Government may, after previous publication and by notification in the Andhra Pradesh Gazette, make rules for carrying out all or any of the purposes of this Act.*
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> *(2) Every rule made under this Act shall immediately after it is made, be laid before the Legislative Assembly of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.*

On a true and fair construction of Section 153 of the 1987 Act there is neither by express phraseology nor by compelling implication, an inference permissible that the power to make rules accommodates the authority to make Rules retrospectively.

It is well settled that the power to make a retrospective binding norm is inherent in plenary legislative dispensation but is not available for subordinate legislation, unless the plenary legislation accommodates such retrospective rule making power. The exception to this principle is the constitutional provision in the proviso to Article 309 of the Constitution which places a rule that could be made by the President or the Governor, as the case may be by a level *pari passu* the substantive legislation under Article 309 (1) of the Constitution vide ***B.S. Vadera v. Union of India***[1] reiterated in a catena of unvarying and binding authority including in ***I.T.Officer, Alleppey v. M.C.Ponnoose***[2]. Since Section 153 of the 1987 Act neither expressly nor by compelling implication aenables enacting of retrospective Rules, the State disentitled to make Rules having a retrospective trajectory.

On the above analysis, amendments to the TTD Rules issued prospectively in G.O.Ms.No.375 dated 26-4-1994 (incorporating clause (viii) in Rule 9 (1)) cannot be withdrawn with retrospective effect from 13-12-1995 i.e., a date anterior to the date of issue of G.O.Ms.No.484 dated 7-8-1997. This constitutes an unauthorized exercise of rule making power by the State and cannot be sustained.

Accordingly it is declared that the amendment to Rule 9(1) of the TTD Rules (omitting clause (viii) from Rule 9),, issued in the impugned G.O.Ms.No.484 dated 7-8-1997, is invalid and inoperative in so far as its retrospective reach i.e., with effect from 13-12-1995; and insofar as its retrospective operation alone. We make no pronouncement on the validity of the amendment to the TTD Rules issued in G.O.Ms.No.484 as regards the other contentions are concerned nor its prospective operation, since Sri G.Vidyasagar, the learned counsel for the petitioner does not canvass the validity of G.O.Ms.No.484 on other grounds, though pleaded in the writ petition.

The writ petition is allowed as above. In the circumstances

however, without costs.

GODA RAGHURAM, J

19th July, 2012
GRR

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[1] AIR 1969 SC 118

[2] AIR 1970 SC 385